

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA**

No. 1:20-cr-00041-MR-DC

UNITED STATES,)	
PLAINTIFF)	
)	M. Reidinger, USDJ
v.)	D. Keesler, USMJ
)	
FREDRICK THOMAS GETTINS STROHM,)	
DEFENDANT)	
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**MEMORANDUM IN SUPPORT OF
MOTION TO EXTEND SELF-SURRENDER DATE**

FREDRICK THOMAS GETTINS STROHM, by and through undersigned counsel, respectfully submits this Memorandum in Support of his Motion to Extend Surrender Date [Doc. 33].

Mr. Strohm is 41-year-old with many years of tobacco use and dependence. While otherwise generally healthy, the Centers for Disease Control and Prevention (“CDC”) recognize that his smoking – and almost certain nicotine dependence¹ – as an underlying medical condition that

¹ See, e.g., Benowitz, M.D., “Nicotine Dependence,” N Engl J Med.; 362(24): 2295–2303 (6/17/2010) [<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2928221/> , 3/16/2021].

increases risks from COVID-19. Mr. Strohm is eligible for vaccination per the North Carolina Department of Health and Human Services (“NCDHHS”) as of tomorrow, March 17, in a fourth category eligible for still limited inoculations.

Strohm faces an 18-month sentence of routine incarceration for an embezzlement offense. There is no violence anywhere in Mr. Strohm’s history. In fact, this Court has graced Mr. Strohm with an unsecured appearance bond since he entered his guilty plea in September 2020.

This Court also graced Mr. Strohm with the privilege of self-surrender, once the U.S. Marshals notified him of his time and place of imprisonment. *See* Doc. 28 (Judgment) at 2 (filed 2/22/2021). Rather than the many weeks this was expected to take, though, the Marshals notified Strohm of the Bureau of Prisons’ (“BOP”) decision on or about March 1, 2021 – the week after the judgment’s entry into the record. He is set to surrender on March 22, 2021.

Besides attending to remaining, important personal affairs, and transitioning his two children to a life without their father, Mr. Strohm can now receive vaccination against COVID-19 before his self-surrender – with enough time. Mr. Strohm can enter prison with minimum risks to himself and others, if he can get more time before his surrender to get vaccinated.

A. NOVEL CORONAVIRUS – EFFECTS AND CAUSES

“**CO**rona Virus Infectious **D**isease **2019**,” or COVID-19, was first noticed to kill through widespread lung damage. But the virus also thickens blood, which increases risks of hypertension and clotting that can end in strokes, aneurysms, or other vascular damage. See Taylor Ardrey, “COVID-19 Autopsy Study Finds Blood Clots in 'Almost Every Organ', Pathologist Says,” BUSINESS INSIDER (7/10/2020) [<https://www.businessinsider.com/blood-clots-in-coronavirus-autopsies-nyu-study-2020-7>, last visited 3/16/2020].

Besides these systems directly weakened by smoking, the virus also ravages livers, kidneys, and even brains. See, e.g., Meredith Wadman, *et alia*, “How does coronavirus kill? Clinicians trace a ferocious rampage through the body, from brain to toes,” SCIENCE MAGAZINE (4/17/2020) [<https://www.sciencemag.org/news/2020/04/how-does-coronavirus-kill-clinicians-trace-ferocious-rampage-through-body-brain-toes>], last visited 3/16/2021].

The CDC particularly cautions persons with certain pre-existing conditions, including former smokers and COPD (chronic obstructive pulmonary disease) sufferers, and those with cardiovascular challenges. See

CDC, “People of Any Age with Underlying Medical Conditions,” (updated 3/15/2020) [<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>, last visited 3/16/2020].

Everyone, of every age, remains at risk of contracting COVID-19, and not even surviving seems to guarantee future immunity.

Wearing face coverings and “social distancing” – remaining at least six feet away from others – reduce infection risks. See Press Release, “CDC calls on Americans to wear masks to prevent COVID-19 spread” (7/14/2020) [<https://www.cdc.gov/media/releases/2020/p0714-americans-to-wear-masks.html>, last visited 3/16/2020]; and CDC, “Social Distancing” (updated 11/7/2020) [<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>, last visited 3/16/2021]. But even with containment efforts, the COVID-19 pandemic has claimed over 532,000 U.S. lives since January 2020, with nearing 30 million persons *known* to be infected. See CDC, “Cases in the U.S.,” updated 3/15/2021 [<https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>, last visited 3/15/2021].

We cannot know how many around us are infected but undiagnosed

because they are pre-symptomatic, or asymptomatic, or simply untested. Thus, former CDC Director Robert Redfield, M.D. last year offered a “retrospective estimate . . . that there were 10 times more cases than reported from the period where we’ve been examining antibody data: March through May.” CDC Press Release, “Dr. Robert R. Redfield Statement on SARS-CoV-2 infections” (7/22/2020) [<https://www.cdc.gov/media/releases/2020/s0722-SARS-CoV-2-infections.html>, last visited 3/16/2021].

B. BOP’S REACTIONS, AND SYSTEMIC INCAPABILITIES, REGARDING COVID-19

We don’t know how many inmates and staffers are actually being tested by the BOP. We don’t know how many vaccinations have gone to whom, or where. We don’t know how many infected inmates and staffers remain uncounted because, for example, the BOP simply lacks the tests – or the will – to confirm likely infections. *See, e.g.*, Walter Pavlo, “Underreporting COVID-19 Outbreaks In Prison,” *Forbes* (4/1/2020) [<https://www.forbes.com/sites/walterpavlo/2020/04/01/bureau-of-prisons-underreporting-outbreaks-in-prison/#cb93c747ba32> , last visited 3/15/2021].

We do know that the still-crowded BOP lacks space to contain suspected

cases from still-negative inmates, or to quarantine fully the positive from either group. Inmates are too often left to fashion whatever cloth covers they can, or keep wearing the tatters of weeks-old masks. Obviously sick and distressed inmates await test results without any segregation, then often get quarantined in the Special Housing Unit – the “Hole” – as the only place in the prison with separate quarters. *See, e.g.,* Malea Martin, “People incarcerated at the Lompoc penitentiary speak out about how they were treated during one of the largest COVID-19 prison outbreaks in the nation,” SANTA MARIA (CA) SUN (8/5/2020) [<http://www.santamariasun.com/cover/19854/people-incarcerated-at-the-lompoc-penitentiary-speak-out-about-how-they-were-treated-during-one-of-the-largest-covid19-prison-outbreaks-in-the-nation/>], last visited 3/16/2021].

Employees’ union Council of Prison Locals (“CPL”) C-33, a part of the American Federation of Government Employees (“AFGE”), complained to the Occupational Safety and Health Administration (“OSHA”), about the dangers BOP staffers face.

Federal prisons are ‘proliferating the spread’ of coronavirus, according to a March 31 complaint prison workers have filed with the Occupational Safety and Health Administration. The union

complaint, obtained by Government Executive, cites “imminent danger” conditions at facilities nationwide.

Courtney Bubl , “Federal Prisons Pose ‘Imminent Danger’ in Spreading COVID-19, Union Says,” GOVERNMENT EXECUTIVE (4/6/2020)

[<https://www.govexec.com/oversight/2020/04/federal-prisons-pose-imminent-danger-spreading-covid-19-union-says/164390/>, last visited 3/16/2021].

“According to Joe Rojas, the Council of Prisons Southeast Regional Vice President . . . ‘We were never included in any of the phases, which has caused hostility between labor and management. We should be included so we can help our staff disseminate information. This is one reason why this agency is in chaos. No leadership and no direction.’” Walter Pavlo, “As Bureau of Prisons Enters ‘Phase 9’ Of COVID-19 Plan, BOP Staff Wonder If There Is A Real Plan,” FORBES (8/7/2020)

[<https://www.forbes.com/sites/walterpavlo/2020/08/07/as-bureau-of-prisons-enters-phase-9-of-covid-19-plan-bop-staff-wonder-if-there-is-a-real-plan/>, last visited 3/16/2021].

Indeed, BOP’s lack of leadership headlines an Inspector General’s (“OIG”) blistering critique of Lompoc FCC’s COVID-19 response, literally a continent away from Joe Rojas’ complaint. See USDOJ-OIG, Evaluation and Inspections

Division Rep. 20-086, “Pandemic Response Report: Remote Inspection of Federal Correctional Complex Lompoc,” at 9-10 (7/23/2020) [https://oig.justice.gov/sites/default/files/reports/20-086_0.pdf, last visited 3/16/2021]. Pre-existing shortages of medical and correctional staff also contributed to uncontrolled explosions in Lompoc’s COVID-19 infections. *See id.*, at 8.

C. BOP’S UNDERSTAFFED AND UNDER-RESOURCED HEALTH CARE SYSTEM COULD NOT MEET BASIC NEEDS EVEN BEFORE THE NOVEL COVID-19 PANDEMIC

For decades the BOP has struggled with a chronic and deadly shortage of medical resources, “insufficient numbers of physicians and nursing staff to perform required clinical and other related tasks.” General Accounting Office (“GAO”), *Bureau of Prisons Health Care: Inmates’ Access to Health Care is Limited by Lack of Clinical Staff*, GAO/HEHS-94-36, February 10, 1994, at 2 [<http://archive.gao.gov/t2pbat4/151025.pdf>, last visited 3/16/2021].

Chief among the BOP’s concerns is how “to contain inmate health care costs and increase efficiency of services.” GAO, *Federal Prisons: Responses to Questions Related to Containing Health Care Costs for an Increasing Inmate Population*, GGD-00-160R, June 14, 2000, at 4

[<https://www.gao.gov/products/ggd-00-160r>, last visited 3/16/2021]. The result has been, among other problems, a reliance on paraprofessionals, rather than more highly-paid physicians. GAO, *Responses to Questions Related to Containing Health Care Costs*, GGD-00-160R, at 2.

A 2008 Inspector General's audit found the BOP's cost-cutter health care effectively contained cost-per-inmate, but "each of the BOP institutions we tested did not always provide recommended preventive health care to inmates." USDOJ-OIG, *Federal Bureau of Prison's [sic] Efforts to Manage Inmate Health Care*, Audit Report 08-08 (Feb 2008), at ii [<http://www.justice.gov/oig/reports/BOP/a0808/final.pdf>, last visited 3/16/2021].

Further, "BOP institutions did not consistently provide medical services recommended by BOP guidelines to inmates." *Efforts to Manage Inmate Health Care*, Audit Report 08-08, at 15. Just five years ago, the OIG still "found that limited institution staff and inadequate staff training affect the BOP's ability to address the needs of aging inmates." OIG, Evaluation and Inspections Division "Impact of an Aging Inmate Population on the Federal Bureau of Prisons," at i, Report 15-05 (May 2015)

[<https://oig.justice.gov/reports/2015/e1505.pdf> , last visited 3/16/2021].

Understaffing, and the resulting misuse of remaining, over-extended resources, permeated another OIG report two years later. *See* “Review of the Federal Bureau of Prisons’ Medical Staffing Challenges,” Rep. 16-02 (March 2016) [<https://oig.justice.gov/reports/2016/e1602.pdf> , last visited 3/16/2021]. BOP pay and benefits cannot compare to private sector earnings, diminishing an already thin applicant pool and forcing the BOP to go – at higher cost – to contracted physicians and other specialists (when available).

The BOP has actively recruited for personnel, for prisons across the country, for over a year. *See, e.g.*, BOP, “Recruitment Incentive Location Update: Bureau of Prisons continues hiring nationwide” [https://www.bop.gov/resources/news/20190723_recruitment_incentive_location_update.jsp , updated 7/23/2019, last visited 3/16/2021]; and “Work on the Inside,” [<https://www.bop.gov/jobs/>, last visited 3/16/2021]. But BOP medical cadres remain understaffed even for remedial needs, decades after recognizing chronic shortages of medical resources.

That same health care system cannot claim to be anything but overwhelmed by the still largely unrestrained novel virus now infecting an

unknown number of inmates and staffers (and staff families).

D. CONCLUSION

According to the BOP.gov website, as of March 16, 2020, the BOP has 125,146 federal inmates in BOP-managed institutions and 13,617 in community-based facilities. The BOP staff complement is approximately 36,000. Of those persons, 501 federal inmates and 1,391 BOP staff nationwide have confirmed positive COVID-19 test results. Currently, 47,173 inmates and 5,246 staff have allegedly recovered, while 225 federal inmate and four BOP staffer deaths are attributed to COVID-19.

Pandemic mitigation tactics like “social distancing” and “sheltering at home” are not possible in a prison setting. Inmates are stacked atop one another at night, chronically pressed together all day, and forced to share high-touch items like phones, showers, toilets and computer terminals. Extended imprisonment today is, at some point, to face exposure.

We do not yet know how and how many the virus will affect, including permanently, even amongst we who *can* take precautions. We know that inmates are figurative fish in a barrel, locked in the close quarters of aging,

under-sanitized, and often poorly-ventilated prisons.

There is no “public safety” reason to hurry this compliant, self-surrendering defendant into prison, especially when the precautionary measures of vaccination could protect him in a matter of weeks. This move would also help to protect staff and inmates at Strohm’s designated prison.

We therefore ask the Court to allow Mr. Strohm time for COVID-19 vaccination, which in turn will also address his remaining family, children, and personal matters. We ask for a surrender date of Tuesday, June 15, 2021.

Respectfully submitted this March 16, 2021.

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CERTIFICATE OF SERVICE

I hereby certify this 16th day of March, 2021, that I served a copy of the foregoing **Defendant Strohm's Memorandum in Support of Motion to Extend Self-Surrender Date** in accordance with the Court's CM/ECF system.

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